

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ZAMIRA S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 2:21-cv-00233-BAT

**ORDER REVERSING AND  
REMANDING FOR FURTHER  
ADMINISTRATIVE PROCEDURES**

Plaintiff Zamira S. seeks review of the denial of her application for Supplemental Security Income. She contends the ALJ erred by miscalculating the medical opinions and by finding she did not require an assistive device to ambulate. Dkt. 10. The Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**BACKGROUND**

Plaintiff applied for SSI on January 29, 2015, alleging disability as of January 1, 2011. Tr. 246, 248. After her application was denied initially and on reconsideration, the ALJ conducted a hearing and issued a decision finding plaintiff not disabled. Tr. 106-18. The Appeals Council vacated and remanded that decision with directions to reevaluate plaintiff's mental impairments and her residual functional capacity. Tr. 125-26. The ALJ conducted a second

1 hearing and, on July 27, 2020, issued a decision finding plaintiff not disabled. Tr. 15-25. Plaintiff  
2 now seeks review of that decision.

### 3 DISCUSSION

#### 4 A. Medical opinions

5 Plaintiff argues that the ALJ erred by rejecting the opinion of treating doctors Anusha  
6 Iyer, M.D., and Rebecca Simon, M.D., failing to address the opinion of reviewing doctor Renee  
7 Eisenhower, Ph.D., and discounting the opinions of examining doctors Richard Washburn,  
8 William Wilkinson, and Shaun Kenderdine. Dkt. 10 at 3. In general, the ALJ must give specific  
9 and legitimate reasons for rejecting a treating or examining doctor's opinion that is contradicted  
10 by another doctor, and clear and convincing reasons for rejecting a treating or examining  
11 doctor's uncontradicted opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996).

##### 12 I. Dr. Iyer and Dr. Simon

13 In October 2015, Dr. Iyer filled out and Dr. Simon signed a Workfirst Documentation  
14 Request for Medical or Disability Condition. Tr. 789-91. They opined that due to anxiety,  
15 depression, and PTSD plaintiff was unable to concentrate, focus, and interact well with others;  
16 her chronic abdominal pain limited her ability to stand, perform repetitive motions, bend, and  
17 reach; and her exertional capacity was limited to sedentary work. Tr. 789-90. They opined that  
18 plaintiff's limitations left her unable to participate in work activity. Tr. 789. They checked a box  
19 indicating that plaintiff's condition was permanent and also opined that plaintiff's condition  
20 would limit her ability to work, look for work, or train to work for 12 months. Tr. 790.

21 The ALJ gave no weight to this opinion, along with several others, finding that because  
22 they were given prior to the period at issue, they provided no insight into plaintiff's functioning  
23 during the relevant period. Tr. 24.

1 Plaintiff argues that because Dr. Iyer and Dr. Simon gave their opinion 5 months before  
2 plaintiff's application date and opined that the limitations they described would last at least 12  
3 months, the ALJ's finding that their opinion provided no insight to plaintiff's functioning during  
4 the relevant period is erroneous. Dkt. 10 at 5. Plaintiff also notes that although the relevant  
5 period for her SSI claim began on the date she applied for SSI, January 29, 2015, in that  
6 application she alleged disability as of January 1, 2011, meaning that Dr. Iyer and Dr. Simon  
7 gave their opinion after her alleged onset date. *Id.*

8 The Commissioner argues that the ALJ's rationale for rejecting this opinion was valid  
9 because "medical opinions that predate the alleged onset date of disability are of limited  
10 relevance." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008); Dkt.  
11 11 at 2. However, although this opinion predates plaintiff's SSI application date, it does not  
12 predate her alleged onset date of January 1, 2011. This rationale does thus not apply to the  
13 opinion at issue.

14 The Commissioner also puts forth several reasons why the ALJ might have found this  
15 opinion inconsistent with other evidence in the record. Dkt. 2-4. But the ALJ made no such  
16 findings, meaning that the Commissioner's argument is an improper post-hoc rationalization that  
17 this Court cannot rely on to affirm the ALJ. *See Pinto v. Massanari*, 249 F.3d 840, 847-48 (9th  
18 Cir. 2001).

19 Dr. Iyer and Dr. Simon stated that the limitations they opined would last for at least seven  
20 months into the relevant period for purposes of plaintiff's SSI claim. The ALJ's finding that the  
21 opinion has no insight into plaintiff's functioning during the relevant period is unsupported by  
22 the evidence and not a clear and convincing or specific and legitimate reason to reject the  
23

1 opinion. The ALJ failed to give any valid reasons for rejecting the opinion of these treating  
2 doctors. Accordingly, this case must be remanded for consideration of this opinion.

3       2.       *Dr. Eisenhower*

4       Dr. Eisenhower reviewed the record in September 2016 at the request of the Washington  
5 State DSHS. Tr. 764-65. She opined that the diagnoses given by Dr. Wilkinson after his  
6 examination—major depression, severe, and anxiety disorder, unspecified—were supported by  
7 the medical evidence, as were the severity, functional limitations, and duration of plaintiff's  
8 impairment. *Id.* Dr. Eisenhower again reviewed the record for DSHS in August 2018 and opined  
9 that a recent examination which noted ongoing symptoms and a diagnosis of major depression  
10 was supported, as were the severity, functional limitations, and duration of plaintiff's  
11 impairment. Tr. 751-52. The ALJ did not discuss either opinion from Dr. Eisenhower.

12       Plaintiff argues that this omission was erroneous because Dr. Eisenhower is a reviewing  
13 source similar to the Social Security Administration's own medical consultants and the ALJ  
14 should have considered her opinions. Dkt. 10 at 6. She also asserts that these opinions are part of  
15 the evidence the Appeals Council directed the ALJ to address when it remanded the case. *Id.*

16       The Commissioner, referring only to Dr. Eisenhower's 2016 opinion, responds that the  
17 ALJ was not required to discuss the opinion because it was not significant, probative evidence  
18 that the ALJ must give a reason to reject, arguing that the opinion was merely a brief summary of  
19 Dr. Wilkinson's examination findings and a checkbox indicating that limitations were supported.  
20 Dkt. 11 at 6-7. The Commissioner also argues that the opinion was inconsequential to the ALJ's  
21 decision and any error in failing to discuss it was therefore harmless. Dkt 11 at 6-7.

22       The ALJ erred by failing to discuss these opinions. Dr. Eisenhower gave her opinions  
23 after reviewing medical evidence in the record, agreeing with the diagnoses and limitations

1 included in the records she reviewed. One of those opinions was Dr. Wilkinson's, which the ALJ  
2 discounted in part by finding that it was inconsistent with other evidence in the record—a finding  
3 that very well may have been different if the ALJ had considered Dr. Eisenhower's opinion that  
4 Dr. Wilkinson's findings were supported.

5 Because the Court is remanding this case for further administrative proceedings, it need  
6 not decide if this error was harmful. Rather, the Court directs the ALJ to consider these opinions  
7 on remand.

8 3. *Dr. Washburn, Dr. Wilkinson, and Dr. Kenderdine*

9 Dr. Washburn examined plaintiff in April 2016 and opined that her overall level of  
10 disability was marked to severe. Tr. 476-80. He opined that plaintiff was easily distracted and  
11 had poor auditory attention and concentration, and she did not appear to have the level of  
12 cognitive functioning and emotional stability needed to cope with the normal stress of full-time  
13 gainful employment. Tr. 480. He opined that her ability to work depended on her ability to use  
14 mental health counseling to think differently about herself and her environment, and she also  
15 likely needed a significant improvement in her physical health as well as obtaining some work  
16 skills. *Id.*

17 Dr. Wilkinson examined plaintiff in August 2016 and opined that plaintiff would have  
18 marked limitations in numerous areas of functioning and moderate limitations in nearly all the  
19 rest. Tr. 669-70. Tr. 667-70.

20 Dr. Kenderdine examined plaintiff in May 2015 and opined that she was severely limited  
21 in following detailed instructions, markedly limited in numerous other areas of functioning, and  
22 moderately limited in nearly all the rest. Tr. 745-47.

1           The ALJ gave little weight to these opinions. Tr. 23-24. Addressing the opinions  
2 together, the ALJ found that while plaintiff displayed cognitive deficits in Dr. Washburn's  
3 examination, she had within normal limit memory, concentration, and fund of knowledge in Dr.  
4 Wilkinson's exam. Tr. 24. The ALJ noted that plaintiff was consistently adequately groomed,  
5 cooperative with genuine and appropriate affect, and normal behavior, speech, and thought  
6 process and content on both exams. *Id.* The ALJ found that the opinions were inconsistent with  
7 the record as a whole, noting that plaintiff has acknowledged that her symptoms improved when  
8 she took her medications as prescribed and that Dr. Iyer—whom the ALJ identified as a treating  
9 psychiatrist—noted that plaintiff was managing her anxiety and stable on her medications. *Id.*  
10 The ALJ also found that subsequent "psychiatric exams" mostly showed plaintiff as alert,  
11 cooperative, and in no distress with normal mood, affect, judgment and insight, and recent  
12 treatment notes show progressive improvement in symptoms and overall functioning with  
13 medication. *Id.* The ALJ concluded that these factors were inconsistent with marked to severe  
14 impairments. *Id.*

15           Plaintiff argues that the ALJ's assessment reveals a superficial and inaccurate review of  
16 the record and that the ALJ did not explain how the normal findings he cited were inconsistent  
17 with the doctors' opinions, particularly given that the ALJ assessed all three opinions together  
18 but did not specifically mention Dr. Kenderdine's opinion. Dkt. 10 at 9-12. She also argues that  
19 the ALJ's misidentification of Dr. Iyer, plaintiff's primary care physician, as a psychiatrist,  
20 resulted in the ALJ relying on Dr. Iyer's findings as psychiatric exams rather than the general  
21 "systems reviews" of a primary care physician. Dkt. 10 at 12-13.

22           The Court finds that the imprecision and inaccuracies in the ALJ's assessment of these  
23 opinions leave the Court unable to find that the ALJ's weighing of these opinions was supported

1 by substantial evidence and free of legal error. First, the ALJ included Dr. Kenderdine's opinion  
2 in a bullet point list of opinions he discounted but made no mention of the opinion in the  
3 subsequent paragraph giving reasons for discounting the listed opinions despite identifying the  
4 other two doctors by name and discussing their opinions with specifics. The ALJ's failure to  
5 discuss Dr. Kenderdine's opinion or give any specific reasons for discounting it leaves the Court  
6 unable to ascertain whether the ALJ gave valid reasons for discounting the opinion.

7       Next, the ALJ misidentified Dr. Iyer as a treating psychiatrist. An ALJ will generally give  
8 more weight to a specialist's opinion about medical issues related to her area of specialty than to  
9 the opinion of a source who is not a specialist. 20 C.F.R. § 416.927(c)(5). This misidentification  
10 renders it unclear if the ALJ gave Dr. Iyer's opinion undue weight as a specialist. In addition, the  
11 ALJ relied on Dr. Iyer's treatment notes as "psychiatric exams" rather than general exams  
12 conducted as part of a primary care visit. These errors render invalid the ALJ's reliance on Dr.  
13 Iyer's treatment records to undermine the examining psychologists' opinions.

14       And finally, plaintiff has identified inaccuracies in the ALJ's discussion of the record.  
15 For example, the ALJ found that Dr. Wilkinson noted plaintiff's memory, fund of knowledge,  
16 concentration, and abstract thought were within normal limits. Tr. 24. However, although he  
17 checked the boxes indicating these areas were within normal limits, Dr. Wilkinson also stated  
18 that he was unable to assess her in these areas due to language barriers and possibly the effects of  
19 her medications; he also expressed some concerns about her functioning in these areas, such as  
20 the slowness of her responses and need for questions to be repeated or elaborated. Tr. 672. These  
21 comments undermine the ALJ's finding that there was an inconsistency between Dr. Washburn's  
22 findings of cognitive deficits and Dr. Wilkinson's findings of normal cognitive functioning.

1           Given these omissions and inaccuracies, the ALJ court finds that the ALJ's assessment of  
2 these opinions is not supported by substantial evidence or free of legal error. The ALJ shall  
3 reassess these opinions on remand, taking care to give valid reasons for the weight given to each  
4 doctor's opinion.

5           **B.       RFC finding**

6           Plaintiff argues that the ALJ erred in assessing plaintiff's RFC by not including the need  
7 for an assistive device to ambulate and by finding that she could perform light work. Dkt. 10 at  
8 15. With respect to the need for an assistive device, plaintiff argues that the ALJ did not  
9 adequately address why plaintiff did not need an assistive device. *Id.* Plaintiff testified that she  
10 used a walker with four wheels to walk in front of her house and while at home, but she could  
11 not walk too far because of swollen arms and legs. Tr. 63. When the ALJ asked why she needed  
12 a walker plaintiff answered that she could not walk much or stand much so in addition to  
13 medication the doctor gave her a walker so she could walk around the house and in front of the  
14 house and when she gets tired she can sit down to rest. *Id.* at 63-64. The record shows that  
15 plaintiff's primary care doctor prescribed a rolling walker with seat in August 2019 after plaintiff  
16 stated that she wheezes and gets tired when she walks and gets pain in her feet, back of knee, and  
17 back. Tr. 1303-04.

18           The ALJ assessed plaintiff's need for a walker as follows: "The claimant testified to use  
19 of a walker on occasion. However, it does not appear that a walker is medically necessary. As  
20 discussed, physical exams show full strength and normal gait. Recent treatment notes indicate  
21 she was taking walks." Tr. 23.

22           This is a conclusory statement that does not cite to the record and does not give an  
23 explanation as to how the ALJ concluded that a prescribed assistive device was not medically



1 necessary or how plaintiff's reports of taking walks is inconsistent with her testimony that she  
2 used a walker. On remand, the ALJ shall reevaluate plaintiff's need for an assistive device to  
3 ambulate.

4 With respect to her ability to perform light work, plaintiff reasserts that the ALJ failed to  
5 address Dr. Iyer and Dr. Simon's October 2015 opinion, which opined that plaintiff was limited  
6 to sedentary work, arguing that there is no other treating or examining opinion that is  
7 inconsistent with this. Dkt. 10 at 17. Plaintiff also points out that the medical consultants, whose  
8 opinions the ALJ relied on, did not review the records from 2019 and were therefore not aware  
9 that plaintiff's treating providers had prescribed a rolling walker. *Id.* Plaintiff also points out that  
10 the VE testified that the need for a walker to stand and walk would be more consistent with  
11 sedentary work assuming that the objects handled were 10 pounds or less and that, if the  
12 ALJ had found plaintiff capable of only sedentary work, she would not have been able to  
13 perform her past work and would be considered disabled under the grids. *Id.*

14 Because the Court is remanding this case for further consideration of medical opinions  
15 that affect plaintiff's exertional limitations, the ALJ will necessarily have to reevaluate plaintiff's  
16 physical RFC. As part of this reevaluation, the ALJ shall reevaluate whether plaintiff requires the  
17 use of an assistive device to ambulate and the effect of Dr. Iyer's opinion on plaintiff's exertional  
18 limitations.

### 19 CONCLUSION

20 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is  
21 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).  
22 On remand, the ALJ shall reevaluate the opinion of Dr. Iyer and Dr. Simon, shall consider the  
23 opinion of Dr. Eisenhauer, and shall reevaluate the opinions of Dr. Washburn, Dr. Wilkinson,

1 and Dr. Kenderdine. The ALJ shall reevaluate plaintiff's need for an assistive device to ambulate  
2 and shall reevaluate her RFC. The ALJ shall further develop the record and redo the five-step  
3 disability evaluation process as the ALJ deems necessary and appropriate to issue a new  
4 decision.

5 DATED this 8th day of October, 2021.

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8 BRIAN A. TSUCHIDA  
9 United States Magistrate Judge  
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